

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

DAVID L. CLARK and
VIVIAN CLARK
Respondents

Case No.: I-02-72190

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 – 2-1802.05, and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). On June 5, 2002, the Government served a Notice of Infraction (No. 72190) on Respondents David L. Clark, *et al.*,¹ alleging a violation of 21 DCMR 700.3, which requires solid wastes to be properly stored and containerized.² The Notice of Infraction alleged that the violation occurred on May 29, 2002, at 326 Delafield Pl., N.W., and sought a fine of \$1,000.

On June 20, 2002, Ms. Vivian Clark filed an answer of Deny on behalf of Respondents and requested a hearing. At the hearing on September 5, 2002, Jermaine Carter, the Government

¹ D.C. Official Code §2-1802.01(b)(1) requires that each respondent must be named in the Notice of Infraction. However, in this case Respondent Vivian Clark voluntarily appeared on her own behalf and on behalf of Respondent David L. Clark, thereby curing the facial defect in the Notice of Infraction for failure to name her.

² 21 DCMR 700.3 provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

inspector who issued the Notice of Infraction (the “Inspector”), appeared on behalf of the Government. Ms. Clark, who owns 326 Delafield Pl., N.W., jointly with her brother David L. Clark, appeared on behalf of Respondents.

II. Summary of the Evidence

The Inspector testified that on May 29, 2002, he was inspecting the alley behind the even-numbered side of the 400 block of Delafield Pl., N.W., and he observed uncovered trash receptacles overflowing with plastic bags filled with solid wastes and trash and debris lying on the ground around the receptacles. The Inspector took a photograph of the area that shows the conditions upon which the charged violation is based. Petitioner’s Exhibit (“PX”) 100. The photograph also shows that the trash receptacles were near the alley standing alongside a fence that separates the property from the adjacent property. *Id.*

The Inspector stated that on the property where the violation occurred was a semi-detached four-unit apartment building that on one side was bordered by a passageway separating the property from an unattached four-unit apartment building located at the corner of 4th Street and Delafield Pl., N.W. On the other side, the property was attached to another four-unit apartment building.

To determine the address of the property, the Inspector drove around to the front of the buildings on Delafield Pl. and he noted the detached building on the corner of 4th Street and Delafield Pl. and the passageway that separated it from the adjoining property where the violation occurred, which he described as a semi-detached four-unit building. The Inspector said that on this building, the semi-detached apartment building abutting the passageway, he saw the numbers “326” above the doorway.

As he testified, the Inspector drew a plat showing the location of the property where the violation occurred and the contiguous properties. This shows a building at the corner of 4th and Delafield Pl., N.W., and a passage way between it and the adjoining property, where the alleged violation occurred, which the Inspector said was 326 Delafield Pl., N.W. PX 102.

A week after the violation occurred, on June 5, preparatory to the issuance of the Notice of Infraction, the Inspector obtained a copy of the Property Detail record, a real property tax record maintained by the Chief Financial Officer of the District of Columbia for 326 Delafield Pl., N.W. The Property Detail record listed "DAVID L CLARK ET AL" as the owners of this property. PX 101.

Ms. Clark testified that she and her brother, David Clark, own 326 Delafield Pl., N.W., which she described as an attached four-unit apartment building. She stated that the property where the violation occurred, as described by the Inspector and as shown in the photograph he took (PX 100), was 330 Delafield Pl. N.W., the property adjacent to her property. She said 330 Delafield Pl., N.W., is the semi-detached four-unit apartment building bordering the passageway running between that property and the building on the corner of 4th Street and Delafield Pl., N.W. Referring to the photograph the Inspector took, Ms. Clark said 326 Delafield Pl., N.W., is the property on the other side of the fence where the overflowing trash receptacles were. PX 100. She stated that the rear of 326 Delafield Pl., N.W., is completely fenced, with a gate on the alley side, and that there is an enclosure made of cinderblock where the trash receptacles are kept. The Inspector acknowledged seeing such an enclosure during his inspection of the area, and he testified that it was located on the property adjacent to where the violation occurred. On the plat he drew the Inspector marked the location of the enclosure with a circle. However, the Inspector said that the address of the said property was 324 Delafield Pl., N.W. PX 102.

At the conclusion of the hearing, and without objection from the Government, I kept the record in the case open to allow Respondents the opportunity to submit photographs of the front and back of their property and the properties adjacent to it, to further support the defense that their property was erroneously identified as the place where the violation occurred. The Government was also allowed to respond to any submission made by Respondents, to object or to submit other evidence that locates Respondents' property in relation to adjacent properties, such as the District of Columbia tax map of the area, the Property Detail record from the District's real property tax records, etc. Also, I permitted either party to request a further hearing.

Since the hearing, Respondents have filed nine photographs showing the front and rear views of 326 Delafield Pl., N.W., the properties adjacent to it, 330 Delafield Pl., N.W., and 322 Delafield Pl., N.W., and the property on the corner of 4th Street and Delafield Pl., N.W. Without objection by the Government these photographs have been admitted into evidence, marked Respondents' Exhibits ("RX") 200 through 208, inclusive. These photographs show that the rear of 326 Delafield Pl., N.W., is completely fenced, with a gate opening to the alley and with an enclosure for trash made of cinderblocks located inside the fence abutting the alley. RX 200-202. The photograph of the rear of 330 Delafield Pl., N.W., (RX 204), is the same area shown in the photograph taken by the Inspector of the scene of the violation. (PX 100).

The Government has not filed a response in connection with the photographs submitted by Respondents, and none of the parties requested a further hearing.

Based on the testimony in the record, my evaluation of the credibility of the witnesses and the exhibits admitted into evidence, I make the following findings of fact and conclusions of law.

III. Findings of Fact

On May 29, 2002, the Inspector observed uncovered trash receptacles overflowing with plastic bags filled with solid wastes and trash and debris lying on the ground around the receptacles at the rear of a property in the even-numbered side of the 300 block of Delafield Pl, N.W. I find that the property in question was 330 Delafield Pl., N.W., but the Inspector erroneously identified it on the Notice of Infraction as 326 Delafield Pl., N.W. The Respondents are the owners of 326 Delafield Pl., N.W. In light of this finding, it is unnecessary to make further findings of fact on the merits of the infraction.

IV. Conclusions of Law

The Government has failed to prove by a preponderance of the evidence that Respondents committed the violation as charged in the Notice of Infraction. The Respondents own the property adjacent to the property where the violation occurred, and their property was erroneously identified in the Notice of Infraction as the place where the infraction occurred. Accordingly, I shall dismiss the Notice of Infraction. D.C. Official Code § 2-1802.03(c).

V. Order

Based on the above findings of fact and conclusions of law, it is this _____ day of _____ 2002:

ORDERED, that the Notice of Infraction is **DISMISSED WITH PREJUDICE**.

/s/ 10/02/02

Robert E. Sharkey
Administrative Judge